

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

120442-169975

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on _____

Signature _____

Typed or printed name _____

Application Number

10/756,152

Filed

January 12, 2004

First Named Inventor

Rui Li

Art Unit

2455

Examiner

Bharat Barot

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

/Dennis M. de Guzman/

Signature

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

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Typed or printed name

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☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

November 5, 2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below.

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Rui Li
 Application No. : 10/756,152
 Filed : January 12, 2004
 For : METHOD AND APPARATUS FOR MAINTAINING LONGER
 PERSISTENT CONNECTIONS

Examiner : Bharat Barot
 Art Unit : 2455
 Docket No. : 120442-169975
 Date : November 5, 2009

Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents:

This paper is being filed to submit arguments in support of the Pre-Appeal Brief Request for Review (form PTO/SB/33) that accompanies this paper. A Notice of Appeal along with the requisite fee (in the amount of \$30 to cover the difference between the requisite \$540 Notice of Appeal fee and the \$510 fee that was previously paid for the prior Notice of Appeal filed on September 8, 2008) are also being submitted herewith.

These documents are being submitted in response to the non-final Office Action dated August 5, 2009 ("the present Office Action") that reopened prosecution by removing the present application from the appeal process. Filing the present Notice of Appeal and Pre-Appeal Brief Request for Review documents is proper for at least the reason that the claims have been twice rejected and are thus eligible for appeal, as specified in 37 CFR 41.31.

It is kindly requested that the legal and factual basis of the rejections of pending claims 1-36 and 43-52 be reviewed in light of the remarks that follow.

Remarks

Independent claims 1, 14, 22, 27, and 31 stand rejected in the present Office Action under 35 U.S.C. § 103(a) as allegedly being unpatentable over Craig (U.S. Patent No. 7,031,314) in view of Peiffer (U.S. Patent No. 7,055,028). Their respective dependent claims also stand rejected under 35 U.S.C. § 103(a). A *prima facie* case for obviousness requires, *inter alia*, that the reference(s) teach or suggest all recitations that are present in a claim. The Examiner asserts that the combination of Craig and Peiffer teaches all recitations of claims 1, 14, 22, 27, and 31. However, it is submitted that the Examiner fails to identify/cite any portion (from Craig and/or Peiffer) that teaches one or more recitations in claims 1, 14, 22, 27, and 31. Therefore, the Examiner fails to make a proper *prima facie* case for obviousness, and accordingly, the rejections of claims 1, 14, 22, 27, and 31 are clearly erroneous.

Independent claim 1 is representative and recites, *inter alia*, the following (emphasis ours):

“receiving at said network device via said client-side connection a communication that signals said server-side connection to close; and maintaining persistent, by said network device, at least the server-side connection in response to said communication received via said client-side connection”

On page 3 (section 6) of the present Office Action, the Examiner cites column 17, line 57 to column 18, line 11 of Craig as allegedly teaching “receiving at said network device via said client-side connection a communication that signals said server-side connection to close” (emphasis ours). The Examiner further asserts on page 3 (section 6) of the present Office Action that this passage of Craig teaches that “during the close state the service module responds to communication received by the client in order to close connection that closing the client-side connection and maintaining the server-side connection” (emphasis ours).

The Examiner’s assertions that Craig teaches the recitations of claim 1 are traversed herein. Craig’s column 17, line 57 to column 18, line 11 relied upon by the Examiner is reproduced below (emphasis ours):

“After the transaction state is complete, the communication session may then enter into an update state (as indicated generally at 440) that closes the communication session and a close

state (as indicated generally at 450) that closes the connection between the wireless client 110 and the server 180...During the close state, however, the operating system and networking stack of the service module 190 responds to messages received by the wireless client 110 in order to close the client-side connection. The operating system and networking stack then notifies the service application that the client-side connection has been closed, and the service application responds by initiating closure of the server-side connection. The operating system and networking stack of the service module 190 then engages in conventional closure handshakes with the server 180 in order to close the server-side connection as indicated generally at 455.”

Thus, Craig clearly teaches above that he closes (rather than “maintaining persistent”) his server-side connection in response to a communication (e.g., Craig’s above-described “conventional closure handshakes” and/or “...responds to messages received by the wireless client 110”) that signals the server-side connection to close. Accordingly, Craig does not meet the limitations of claim 1 that require, *inter alia*, “receiving at said network device via said client-side connection a communication that signals said server-side connection to close; and maintaining persistent, by said network device, at least the server-side connection in response to said communication received via said client-side connection” (emphasis ours).

On page 4 (section 6) of the present Office Action, the Examiner relies upon Peiffer (column 9, line 58 to column 10) as allegedly teaching “maintaining persistent...at least the server-side connection in response to...” However, column 9, lines 62-63 of Peiffer explicitly teaches that the persistent connection is maintained open “unless explicitly commanded to close” (emphasis ours). Therefore, Peiffer will also CLOSE (rather than “maintaining persistent” as recited in claim 1) the server-side connection in response to a communication that signals (“explicitly command[s]”) the server-side connection to close. Thus, Peiffer does not cure the deficiencies of Craig with respect to the recitations in claim 1 of “receiving at said network device via said client-side connection a communication that signals said server-side connection to close; and maintaining persistent, by said network device, at least the server-side connection in response to said communication received via said client-side connection.”

This failure by the Examiner to provide support for a position that Craig and/or Peiffer teaches or suggests all elements of claim 1 constitutes a failure to establish a *prima facie* case for obviousness. Accordingly, for at least these reasons, the Examiner’s rejection of claim 1 is clearly erroneous in law and fact.

Independent claims 14, 22, 27, and 31 recite subject matter generally similar to some of the recitations of claim 1 above. For reasons analogous to those set forth above, it is respectfully submitted that claims 14, 22, 27, and 31 are also allowable.

Conclusion

It is respectfully submitted that the legal and factual basis for the rejections are clearly erroneous. As such, a Notice of Allowance is kindly requested. The Director is authorized to charge any additional fees due by way of this response, or credit any overpayment, to our Deposit Account No. 500393.

Respectfully submitted,
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